IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 925 OF 2001

Mr. Kamlakar @ Sidharth
Baburao Kelkar,
Age 45 years, Occ. Labourer,
R/at Charni pada, Anjur Phata,
Bhiwandi, Tal. Bhiwandi,
District Thane. ...Appellant

Versus

1. The State of Maharashtra
(At the instance of
Bhoiwada Police Station)

2. Smt. Kantabai @ Shantabai
Kamlakar Kelkar,
R/at. Charni Pada, Anjur
Phata, Bhiwandi,
Tal. Bhiwandi, Dist. Thane ...Respondents.

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Mr. B.G. Tangsali, Advocate for Appellant.

Ms. Shilpa Gajave, A.P.P. for State.

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CORAM: SMT. V.K. TAHILRAMANI, J.

DATED: 6TH JUNE, 2005

ORAL JUDGMENT:-

1. Through this Appeal, the appellant challenges the judgment and order dated 31.10.2001 passed by the learned IInd Ad-hoc Additional Sessions Judge, Thane in Sessions Case No. 99 of 1997. By the said judgment and order, the learned Sessions Judge convicted the appellant under Section 307 of I.P.C. and sentenced him to suffer R.I. for seven years and

to pay fine amount of Rs.2,500/- i/d R.I. for five months.

2. Briefly stated, the prosecution case is as under:-

. The appellant-accused was the husband of the complainant P.W.1 Kantabai who is the injured witness in the present case. There was some dispute between the appellant and his wife on account of property. On account of this dispute, the appellant beat his wife on 3.8.1996 and hence, his wife Kantabai lodged a report against the accused at the police station. The police registered the N.C. in respect of the said offence. The accused asked his wife to withdraw the complaint, however, she refused to do so. On her refusal, the accused was angered and inflicted blows with knife on her arms, palm, rib and thigh. The complainant Kantabai suffered bleeding injuries, she was taken to the hospital where she came to be treated. F.I.R. of Kantabai came to be recorded. Thereafter, investigation commenced. After completion of investigation, charge sheet came to be filed against the accused. In due course, the case came to be committed to the Court of Sessions.

3. Charge came to be framed against the accused under Section 307 of I.P.C. Accused pleaded not

guilty to the said charge and claimed to be tried. The defence of the accused is that of total denial and false implication. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant as stated in para 1 above. Hence, this appeal.

4. I have heard Mr. B.G. Tangsali, the learned advocate for the appellant and Ms. Shipla Gajve, the learned A.P.P. for the State. I have perused the record as well as the judgment and order in the present case. After carefully considering the matter, I am of the opinion that the learned Sessions Judge has rightly convicted the appellant under Section 307 of I.P.C.

5. The conviction of the appellant is mainly founded on the evidence of complainant i.e. the injured witness P.W.1 Kantabai. Kantabai has clearly stated that the appellant was her second husband. There was a dispute between the appellant and her in relation to property. On account of this dispute on one or two occasions, the accused assaulted her, hence, she lodged a report against the accused i.e. her husband. The accused then insisted that she should withdraw her complaint, however, she refused to do so. On 8.8.1996 at noon, the accused again asked her to withdraw her complaint i.e. N.C. which was

lodged at the police station. She refused to do so whereupon the accused got angered, he opened the knife and inflicted the blows with it on her body. She received injuries and she was shifted to hospital where she came to be treated. She lodged her report against her husband. The said report came to be recorded at the hospital. I have carefully perused the evidence of Kantabai and I find that nothing has been elicited in the cross examination of this witness so as to disbelieve her testimony. Hence, I have no hesitation in relying on the evidence of Kantabai.

6. Besides the evidence of Kantabai, Ms. Gajave has also relied on the evidence of P.W.5 Pandurang Jadhav who is the panch witness. This witness has deposed about the recovery of blood stained knife at the instance of the accused so also he has deposed about the recovery of blood stained clothes of the accused at his instance. Nothing has been elicited in the cross examination of this witness so as to disbelieve his testimony. C.A. report at Exh.24 shows that the blood stains on the knife were of "A" group and the blood group of the injured witness is also "A". This is also a strong circumstance which goes against the accused.

7. P.W.3, Dr. Balkrushna Khandale has examined the

injured witness. He has clearly deposed about the injuries on the arms and leg of Kantabai, has also stated that there was one injury on the right side of the chest. Doctor has opined that if the patient has not got the medical aid in time, the patient would have died.

8. Looking to all the material on record, it is seen that there is sufficient material to establish the involvement of the appellant in the crime. In this view of the matter, I am of the opinion that the learned Sessions Judge has rightly convicted the appellant under Section 307 of I.P.C.

9. At this stage, Mr. Tangsali, the learned advocate for the appellant has submitted that though there are number of injuries, the injuries are not so serious in nature and the punishment imposed on the appellant is unduly severe. Hence, the punishment imposed on the appellant may be reduced to the period undergone by him. Mr. Tangsali, has further submitted that the incident took place on account of sudden quarrel and hence, in this view of the matter also the sentence ought to be reduced. The learned A.P.P. on the other hand has submitted that looking to the number of injuries, the sentence ought not to be reduced to the period undergone but at the most the sentence of imprisonment may be reduced to five

years. This suggestion appears to be reasonable.

10. In this view of the matter, this appeal is partly allowed. The conviction of the appellant under Section 307 of I.P.C. is confirmed, however, the sentence is reduced to five years. The fine amount and remaining part of the judgment is maintained.

11. Criminal appeal is partly allowed in the above terms.

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